IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2645 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ALLARUBHABHAI JETABHAI - Appellant(s)
Versus
HARUNBHAI JUSABBHAI & 2 - Defendant(s)

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Appearance :

MS PAURAMI B SHETH for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1 - 2.
MR DAKSHESH MEHTA for Defendant(s) : 3,,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

This appeal has been filed by the original claimant seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Dhrangadhra by the judgment and award dated 28th September, 2000 in MACP No.597/98.

2. On 8th September 1996, when the appellant-claimant was travelling on his motor-cycle near Halvad, his motor-cycle met with an accident when an incoming chhakda rickshaw collided with the motor-cycle. The appellant received serious bodily injuries. After initial treatment, he was shifted to Ahmedabad for further treatment. During treatment, he was advised amputation of his right leg below his knee. Eventually such a surgery was carried out. For the injuries received in the said vehicular accident, the claimant filed claim petition seeking compensation of Rs.11 lacs from driver, owner and insurer of the chhakda rickshaw.

3. The Claims Tribunal partly allowed the claim petition and awarded compensation of Rs.5,23,040/- to the claimant with interest at the rate of 12 per cent per annum from the date of claim petition till date of deposit.

4. With respect to the question of negligence of the two drivers involved in the accident, the Tribunal found that the driver of the chhakda-

rickshaw was negligent to the extent of 80 per cent in causing the accident and 20 per cent contributory negligence was attributed to the claimant himself. Before the Tribunal, the claimant had examined himself to narrate the circumstances under which the accident had taken place. The claimant had also produced panchnama of scene of the accident. It may be noted that the driver of the chhakda rickshaw was not examined as witness by the original opponents.

5. With respect to the question of quantum of compensation, before the Tribunal the claimant produced documentary evidence to establish that he owned about 33 acres of land situated in village Ghanshyampur and another parcel of land at village Halvad. Both these lands were situated at a distance of about 9 k.m. The claimant urged before the Tribunal that through agricultural operations, he was earning approximately Rs.4 lac per annum. The claimant produced several receipts of sale of his agricultural produce for the period between 9.7.93 and 16.6.95. It was the case of the claimant that on account of the injuries and the permanent disability that he suffered, he is unable to look after his agricultural operations. He is therefore forced to hire labour and additional help for carrying out the agricultural operations on the said lands. In fact, it was the case of the claimant that he had given the land for cultivation to other persons since he was personally not in a position to look after the agricultural operations.

The claimant also urged before the Tribunal that prior to the accident, he owned a small indigenous manual oil mill from which he was earning extra income. In addition thereto, the claimant had also in partnership with other partners purchased a sick oil mill and paid up the dues of the sick unit to the Bank to the extent of Rs.6 lacs. The claimant and his partners were desirous of activating the unit and they had hoped to make substantial profit therefrom.

The Tribunal believed the monthly income of the claimant at Rs.4,000/- from agricultural operations and Rs.1,000/- from his oil mill. Thus, the Tribunal believed total monthly income of the claimant at Rs.5,000/- i.e. Rs.60,000/- per annum. Assessing 60 per cent disability of the claimant, the Tribunal found that he would be at a loss of future income of Rs.36,000/- per annum. The claimant was aged 38 years on the date of the accident. Multiplier of 15 was therefore adopted. Total loss of future income was thus assessed Rs.5,40,000/- (Rs.36000 x 15). The Tribunal further awarded a sum of Rs.20,000/- for pain, shock and suffering and Rs.10,000/- for special diet and attendant charges. Before the Tribunal, the claimant had produced medical bills to the extent of Rs.63,817/-. The Tribunal rounded off the compensation under this head to Rs.63,800/-. The Tribunal found that the claimant would not have been in a position to work at

least for four months. For the said period, the Tribunal awarded a sum of Rs.20,000/- for actual loss of income. In all, compensation was worked out to Rs.6,53,800/-. Since the Tribunal held that the claimant was negligent to the extent of 20 per cent in causing the accident, final compensation was therefore reduced by 20 per cent of the total sum of Rs.6,53,800/-. However, since the Tribunal held that the claimant was negligent to the extent of 20 per cent in causing the accident, compensation was reduced by 20 per cent of the total sum of Rs.6,53,800/-. In the result, the Tribunal awarded compensation of Rs.5,23,040/- as noted earlier.

6. In this appeal, the appellant-claimant has sought enhancement of compensation awarded by the Tribunal. Appearing for the appellant, learned advocate Ms.Paurami Sheth with Ms.Amrita Ajmera submitted that the Tribunal erred in holding the appellant negligent to the extent of 20 per cent in causing the accident. She submitted that the entire responsibility of the accident ought to have been attached on driver of the chhakda rickshaw. She submitted that there was sufficient evidence on record to demonstrate that the claimant was in no way responsible for causing the accident.

7. With respect to the quantum of compensation, she submitted that the Claims Tribunal awarded compensation which was inadequate. The claimant had produced voluminous documentary evidence to establish

his agricultural holding and the profit he was earning therefrom. The Tribunal, therefore, erred in assessing monthly income of the claimant at Rs.4,000/- from such agricultural operations. She further submitted that assessment of Rs.1,000/- from other commercial activities which the claimant were involved in was also on the lower side.

8. On the other hand, learned advocate Shri Dakshesh Mehta for the National Insurance Company, insurer of the chhakda rickshaw opposed the appeal. He submitted that from panchnama of the scene of the accident, it can be seen that there was a sharp curve in the road where the accident took place. The claimant himself ought to have, therefore, slowed down his vehicle. Not having done so, the Tribunal was justified in finding the appellant guilty of contributory negligence to the extent of 20 per cent.

With respect to the question of quantum of compensation, he submitted that the Tribunal has awarded just compensation and the same is not required to be enhanced. He submitted that there is no documentary evidence in respect of the income of the claimant from sources other than agricultural operations. Even with respect to income from agricultural operations, the claimant has produced no conclusive evidence to establish his net profit from such activity. In all, he submitted that the Tribunal has awarded compensation which in no way can

be considered as inadequate. He, therefore, submitted that the appeal deserves to be dismissed.

9. Having heard the learned advocates for the parties and first adverting to the question of negligence of the two drivers involved in the accident, it may be recalled that the claimant himself, who was an an eye-witness, had deposed before the Tribunal regarding the manner in which the accident had taken place. In his deposition before the Tribunal, the claimant had stated that on the date of the accident, he was returning on his motor-cycle from his field at about 7 O' clock in the evening when the chhakda rickshaw came from opposite side with full speed and collied with his motor-cycle. He further stated that it was a day of festival and the chhakda rickshaw driver was therefore in a hurry to carry more passengers. He stated that the rickshaw had come from wrong side and collided with his motor-cycle. He denied the suggestion that the accident had taken place on the middle of the road.

In addition to the eye-witness account of the claimant himself, there was panchnama of the scene of accident which throws light on the relative position of the vehicles. In the panchnana Ex.28, it is recorded that there was damage to the chhakda rickshaw on the right hand side. Right hand side fender of the while was found broken. It is also recorded that there was some damage on the left hand

side of the chhakda rickshaw also which was caused on account of the rickshaw toppling on its side.

It may be recalled that driver of the chhakda rickshaw was not examined before the Tribunal.

10. It can thus be seen that before the Tribunal there was a clear eye-witness account of the claimant suggesting that the accident had taken place on account of the negligence on the part of the chhakda rickshaw driver. The evidence of the claimant is to some extent corroborated by the contents of the panchnama which shows that the chhakda rickshaw was damaged on the right hand side on account of the impact of the accident. This would lend credence to the statement of the claimant that the chhakda rickshaw came from wrong side and collied with the motor-cycle. The panchnama also noted that on account of the chhakda rickshaw toppling and dragging after the accident, there were some marks on the middle of the road. Clearly, therefore, the chhakda rickshaw was not being driven on its correct side. Considering all these aspects of the matter, we find that the entire blame for causing the accident must lie on the door-step of driver of the chhakda rickshaw and no part of the negligence can be attributed to the claimant as done by the Tribunal. We, therefore, find that the chhakda rickshaw driver is solely negligent in causing the accident.

11. Coming to the question of quantum of compensation, we find that the claimant had produced documentary evidence in the form of village record to establish that he owned in his personal name agricultural fields. In Ghanshyampur the claimant owned agricultural lands admeasuring 33 acres. In addition thereto, he also owned agricultural lands in village Halvad. From the revenue records, it can be seen that in the said agricultural lands, the claimant produced several crops every year such as, groundnut, bajri, etc. The claimant had also produced electricity bills from the Gujarat Electricity Board for power connection held by him at both the agricultural lands at Ghanshyampur as well as at Halvad. From the revenue records as well as from the GEB bills produced on record, it can be safely concluded that the agricultural lands were irrigated through tube wells. The claimant had also in his deposition stated to this effect. It can thus be seen that the claimant held substantial area of irrigated agricultural lands which he himself was cultivating. The claimant had also produced several bills and receipts of sale of agricultural produce produced by him on such lands. For a period of two years between July 1993 to June 1995, total sale of such produce was Rs.6,29,589/-. This account was backed by documentary evidence in the form of receipts. Thus the claimant received considerable income from agricultural operations. In addition to the said amount of sale, the claimant also stated before the Tribunal that he had sold other produce to

private traders for which bills were not issued. However, ignoring even such additional claim of the claimant, it cannot be denied that for a period of two years, the total sale proceeds of the agricultural produce of the claimant came to approximately Rs.6,30,000/-.

12. As per the deposition of the claimant before the Tribunal, after the accident he is not in a position to look after his agricultural operations himself. It is not difficult to appreciate that on account of amputation of one leg, the claimant would be seriously handicapped in pursuing his agricultural operations.

13. Considering the fact that the agricultural lands would remain in tact and that despite the physical handicap, the claimant would be in a position to put the agricultural land at least to some use, we would like to consider only the loss in supervisory capacity that the claimant would suffer on account of his injuries. Considering that the claimant was producing agricultural output to the extent of approximately Rs.3,15,000/- per annum as discussed above, believing his contribution by rendering supervision of such agricultural operations at Rs.45,000/- per annum would not be unreasonable. This would be approximately 15 per cent of the total production of the claimant from such agricultural activities. We would, therefore, adopt Rs.45,000/- per annum as contribution of the claimant in the

agricultural operations through his supervision.

14. Coming to the question of other income, the claimant was running a small oil mill before the accident. In addition thereto, he had produced evidence to establish that he was a partner in a partnership firm which had purchased a sick oil mil. Though the claimant suggested that he had himself contributed the entire sum of Rs.6 lacs paid by the partnership firm to the bank and even if such assertion is not be believed, it had come on record that there were two partners in the said partnership firm. The claimant, therefore, could be believed to have contributed at least 50 per cent of the sum of Rs.6 lacs paid by the partnership firm to the bank for purchasing the sick oil mill. This would demonstrate that the claimant had substantial resources and that he expected substantial income from reactivating the closed oil mill. He had stated that he proposed to put the oil mill to use for production of ground-nut oil and other such activities. It would, therefore, not be unreasonable to believe that he would have earned an income of Rs.45,000/- from such other commercial activities. In coming to such a figure, we have taken into consideration the fact that the claimant was already running small oil mill and that as partner of a partnership firm, he had purchased yet another closed oil mill.

Thus, in our assessment, prospective income

of the claimant can be assessed at Rs.90,000/- per annum. The Tribunal found that due to the injuries , the claimant had suffered permanent disability to the extent of 60%. We find that the assessment of disablement is just and reasonable. It cannot be denied that on account of the amputation of leg, movements and activities of the claimant would suffer. He had stated that for looking after his two agricultural fields which are situated at a distance of 9 k.m. from each other, he used to commute on motor-cycle which he cannot now do due to the injuries suffered on account of the accident. Considering the nature of his occupation and considering the injuries, disablement of 60 per cent as assessed by the Tribunal is quite proper.

Taking annual income of the claimant at Rs.90,000/- and applying the disablement of 60%, we find that the claimant would be at a loss of Rs.54,000/- per annum for assessing the future economic loss. Maintaining the multiplier of 15 for the claimant who was aged 38 years on the date of the accident as adopted by the Tribunal, loss of future income works out to Rs.8,10,000/- (Rs.54,000 x 15).

The Tribunal awarded a sum of Rs.20,000/- for pain, shock and suffering. We find that the said compensation is required to be enhanced. The claimant was reasonably young on the date of the accident. He had to suffer amputation of one leg and extensive medical treatment and operation. A sum of

Rs.50,000/- for pain, shock and suffering and loss of amenities of life would therefore be justified. The Tribunal awarded a sum of Rs.63,800/- towards medical expenses on the basis of the bills produced by the claimant. The Tribunal also awarded a sum of Rs.10,000/- for special diet and attendant charges. We see no reason to alter these figures.

We find that the claimant would not have been in a position to discharge any duties for at least for a period of six months. In fact, the claimant had deposed before the Tribunal that after the initial treatment at Halvad, he had to be shifted to an Ahmedabad hospital where he was admitted as an indoor patient for a long duration. Considering all these aspects of the matter, we find that the claimant needs to be compensated for loss of actual loss of income for a period of six months. Considering his monthly income of Rs.7500/- as noted above, the claimant would receive a sum of Rs.45,000/- towards actual loss of income. In the result, the total compensation that is required to be awarded to the claimant works out as under:

Rs.8,10,000/-	for future economic loss.
Rs. 50,000/-	for pain, shock and suffering and loss of amenities of life.
Rs. 63,800/-	for medical expenses
Rs. 45,000/-	for actual loss of income.
Rs. 10,000/-	for special diet and attendant charges

Rs.9,78,800/-.

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15. The claimant would, therefore receive an additional amount of Rs.4,55,760/-(Rs.9,78,800 – Rs.5,23,040/). The additional compensation shall carry interest at the rate of 9 per cent per annum till realization. The appeal is therefore partly allowed to the above extent. The award shall stand modified accordingly.

16. The additional amount awarded by this Court under this judgment shall be deposited by opponent No.3 Insurance Company latest by 15th May 2007. Upon such deposit, the Claims Tribunal shall invest 80% of the amount in fixed deposits with a nationalised bank near the residence of the claimant for a period of five years with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, permission to the claimant to withdraw interest periodically accruing on the fixed deposits and a direction to the bank not to permit the bank account of the claimant to be operated by any power of attorney holder other than a close relative of the claimant. Remaining amount shall be disbursed to the claimant by account payee cheque after proper verification and after informing him about the amounts being invested and disbursed and the terms and conditions of investment.

17. With the above directions, the appeal is

partly allowed and disposed of.

(M.S.Shah, J.)

(Akil Kureshi, J.)

(vjn)